REX [HM the King in Right of Canada]
-against-
BRUHMOMENTSFIJI

REX [SM le Roi du chef de Canada]
-contre-
BRUHMOMENTSFIJI

Handed Down: 22nd July 2025

English Version

A certified translation of the Court's judgment in French is available on request to the presiding judge.

Une traduction authentique en français du présent jugement est disponible sur demande auprès du président.

QWERTY, J.:

1. On the 22nd July 2025, the Crown filed before this Court an information charging Bruhmomentsfiji ("Mr Fiji"). with the offences of failing to stop, flight from a peace officer, dangerous operation of a motor vehicle, and obstruction of a peace officer. Counsel for the Crown, Mr. Cardigan, seeks, on the strength of an affidavit sworn by an officer of the Canadian Forces Military Police, a warrant for the arrest of Mr Fiji.

2. This Court's warrant-issuance power is governed by section 507 of the Criminal Code. In particular, section 507(4) provides that:

> "Where a justice considers that a case is made out for compelling an accused to attend before him to answer to a charge of an offence, he shall issue a summons to the accused unless the allegations of the informant or the evidence of any witness or witnesses taken in accordance with subsection (3) discloses reasonable grounds to believe that it is necessary in the public interest to issue a warrant for the arrest of the accused."

3. In other words, the Court is not at liberty to issue a warrant at will. Instead, "[s]ection 507(4) of the Criminal Code specifies that the first recourse is to a summons," *unless* there is good reason to believe that the public interest will lie in a warrant. *Reg. v. Henry*, 1997 CanLII 1395 (BC SC), at para 10. (See also *Ex parte Canada (Attorney General)*, 2006 QCCS 704 (CanLII), at para 9). Importantly, it is not generally sufficient that a defendant's actions constitute a criminal offence, much less that it is convenient or merely desirable that a warrant be issued. "If the police cannot persuade a judge that a warrant for the defendant's arrest is *necessary*, the judge has no choice but to issue a summons." *Reg. v. Nowazek*, 2018 YKCA 12 (CanLII), at para 101 (emphasis added).

4. After discussing my initial scepticisms with him, it was proposed to me by Mr Cardigan that he present me with further evidence of the defendant's alleged crimes in support of his warrant. While no doubt helpful for the Court's situational awareness, I hope that Mr Cardigan takes no offence at the decline of

his generous offer. Indeed, I do not have any reason to disbelieve, at this juncture, the factual description given by the peace officer, and for the time being, a showing of further evidence is un-necessary. So long as it provides reasonable grounds to believe that one or multiple offences have been committed, any supplemental strength is of no moment to an application for a warrant. An arrest warrant does not seek to provide "pre-conviction punishment" to an accused person. The issuance of a warrant rather than summons does not turn merely upon the strength of the Crown's case. Indeed, that is perhaps the least of the relevant factors which this Court must consider.

5. The standard for issuance of a warrant was discussed in some length by the court in *Reg. v. Mykell*, 2021 BCPC 252 (CanLII), at para 58, per Sutherland J:

> "Section 507(4) has an objective "reasonable grounds" standard to establish that it is "necessary in the "public interest" to issue a warrant. Whether a warrant for [a person's] arrest should have issued comes down to whether there were, objectively speaking, reasonable grounds for [the judge] to believe it was "necessary in the public interest" to issue a warrant. This will often come down to whether the informant provides information relevant to the reasonable grounds standard such as:
>
> - Knowledge of the accused's residence and its stability so a determination can be made whether a summons can be served;
> - Whether there is any reason to believe the accused would not respond to a summons such as the accused having criminal convictions for failing to attend court;
> - Whether conditions need to be placed on the accused's release to ensure their attendance in court;
> - Whether there is reason to believe the accused may interfere with the administration of justice;
> - Whether conditions need to be placed on the accused to protect the public from the safety risk further offending would pose; and
> - Whether there is reason to believe the accused presents a serious threat to the safety of the community possibly requiring their detention.
>
> Important considerations for the latter two assessments include the seriousness of the offence charged including the circumstances behind it and, the nature of the offences contained in the accused criminal record if any, and the nature of any outstanding charges."

6. Likewise, in *Reg. v. Budreo*, 2000 CanLII 5628 (ON CA), at para 66, the Court of Appeal of Ontario found that a section 507(4) warrant was not justified where the maximum sentence was modest such that detention pending trial would have been disproportionate, and, more generally, where it was neither made out that "necessary to preserve the integrity of [judicial] proceedings", that he would "not otherwise attend court" nor that he presented an "imminent risk to the safety of" others.

7. In the circumstances of this application, it is alleged that Mr Fiji stole a police car, crashed it into another police car, failed to stop, and fled in that stolen vehicle. When Mr Fiji eventually alighted from his vehicle, it is alleged that he did so in close proximity to a sensitive government building clearly cordoned off to the public, and that he passed that cordon and trespassed into the building anyway. I do not question that several offences are indeed made out by this allegation. I do, however, note that an arrest warrant is potentially drastic in the circumstances. Judicial proceedings may well be protracted in their nature, lasting several weeks, and the effect of a warrant is to effect the conclusive seclusion of the individual from his natural habitat among fellow men. As the Supreme Court was at pains to stress in *Reg. v. Myers*, 2019 SCC 18 (CanLII), [2019] 2 SCR 105, at para 1, per Wagner, C.J. (emphasis added):

> The right to liberty and the presumption of innocence are fundamental tenets of our criminal justice system. In the pre-trial context, release — at the earliest opportunity and in the least

onerous manner — is the default presumption in Canadian criminal law. *Pre-trial detention is the exception, not the rule*.

8. While it has made out an offence, the Crown, despite some encouragement, has not provided any indication that the defendant would, absent a warrant, not attend court, or that he would somehow interfere with the administration of justice. As respects any likelihood of reoffending, while Mr Cardigan understandably implores the Court to take a fuller measure of the gravity of the defendant's alleged offending, the Crown does not in fact adduce any other indication that the accused person is likely to commit other crimes.

9. As such, I am unfurnished with the "preuve *prima facie* qui … justifie la délivrance," *Duterville c. Procureure générale du Québec*, 2019 QCCA 862 (CanLII), of a section 507(4) warrant, and must deny the Crown's application. The Crown is of course free to make a renewed application under section 512 in light of further information at a later time. (See *Nowazek*, 2018 YKCA, at paras 107-08).

10. The Court's order will issue with this judgment.

Ordonnance

Portant rejet d'une demande de mandat (article 507 C. Cr.)

Canada,
Province d'ONTARIO,

Le 22e jour de juillet 2025,

ATTENDU QUE, le 22e jour de juillet 2025, une inculpation fut introduite par la Couronne contre Bruhmomentsfiji (ci-après « l'accusé ») ;

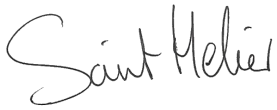
ATTENDU QUE, le même jour, une demande de décernement d'un mandat d'arrêt sur le fondement de l'article 507 du Code Criminel fut déposée par la Couronne contre l'accusé ;

ATTENDU QUE, le même jour, la Cour de céans a entendu les plaidoiries du conseil de la Couronne, Me Cardigan, et a réservé son jugement ;

LA COUR :

- Vu la Charte canadienne des droits et libertés, et notamment ses articles 7 et 9 ;
- Vu le Code criminel et notamment son article 507(4) ;
- Vu son jugement rendu le même jour que la présente ordonnance ;

REJETTE la demande de mandat d'arrêt introduite par la Couronne.



Newplayerqwerty
Juge de la Cour fédéral du Canada